

## Message Text

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E.O. 11652: NA  
TAGS: CGEN  
SUBJECT: DRAFT PROPOSAL FOR US COLOMBIAN CONSULAR CONVENTION

REF: STATE 138979

1. EMBASSY HAS REVIEWED DRAFT PROPOSAL AND ITS COMMENTS, KEYED TO PERTINENT ARTICLES, APPEAR BELOW. AS DEPARTMENT IS AWARE MAIN CONSULAR PROBLEMS IN COLOMBIA ARE PROMPT CONSULAR ACCESS DURING "INCOMUNICADO" PERIOD AND OBTAINING INFORMATION ON STATUS OF CASE DURING "SUMARIO" PERIOD (PERIOD OF INVESTIGATION BY JUDGE WHICH MAY TAKE SEVERAL MONTHS.) COLOMBIAN LAW PERMITS INCOMUNICADO PERIOD OF THREE DAYS, WHICH CAN BE DOUBLED WHEN MORE THAN TWO PERSONS ARE ACCUSED OF THE SAME CRIME; IT IS OFTEN LONGER IN PRACTICE. DURING THIS PERIOD AUTHORITIES MAY, AND IN PRACTICE SOMETIMES DO, PERMIT INITIAL CONSULAR ACCESS. HOWEVER, WE BELIEVE RIGHT OF ACCESS DURING THIS PERIOD SHOULD BE SPELLED OUT IN CONVENTION. DURING THE "INCOMUNICADO" PERIOD PRISONERS HAVE NO RIGHT TO BE REPRESENTED BY AN ATTORNEY BUT COLOMBIAN LAW REQUIRES PRESENCE OF AN ATTORNEY DURING THIS PERIOD (I.E. ATTORNEY MUST BE PRESENT WHEN PRISONER PRESENTS STATEMENT TO JUDGE AND HAVE ACCESS TO PERTINENT FILES BUT CANNOT REPRESENT OR ADVISE CLIENT). COLOMBIAN LAW ALSO SPECIFIED THAT PROCEDURES DURING SUMARIO PERIOD ARE SECRET ALTHOUGH ONCE JUDGE MAKES DECISION TO HOLD PRISONER FOR TRIAL THE EMBARGO ON SUCH PROCEEDINGS IS LIFTED. WE ALSO HAVE HAD TROUBLE DETERMINING STATUS OF CASES AT  
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OTHER TIMES. WHILE EMBASSY HAS BEEN UNSUCCESSFUL IN ARGUING POINT BEFORE LOCAL AUTHORITIES, WE BELIEVE PARAGRAPH 3 ARTICLES 3 OF 1850 CONSULAR CONVENTION CAN BE CONSTRUED TO AUTHORIZE CONSULAR ACCESS TO COURT PROCEEDINGS IF REQUESTED BY THE PRISONER. TEXT OF THIS ARTICLE READS "THAT (CONSULAR OFFICERS) MAY AS THE NATURAL DEFENDERS OF THEIR FWLLOW COUNTRYMEN, APPEAR IN

THEIR NAME AND BEHALF, WHENEVER SO REQUESTED BY THEM BEFORE THE RESPECTIVE AUTHORITIES OF THE PLACE IN ALL CASES IN WHICH THEIR SUPPORT MAY BE NECESSARY." WE BELIEVE A VARIATION OF THIS PARAGRAPH WOULD BE USEFUL IN OBTAINING INFORMATION.

2. COMMENTS ON PARTICULAR POINTS IN DRAFT PROPOSAL FOLLOW:

A) ARTICLE 1(D) DOES THE DEFINITION CONSULAR OFFICER INCLUDE CONSULAR AGENTS? IF SO, PROVISION OF ARTICLE 5 PROHIBITING PERMANENT RESIDENTS OF THE RECEIVING STATES FROM BEING CONSULAR OFFICERS WILL PRESENT PROBLEMS.

IF CONSULAR AGENTS ARE NOT CONTEMPLATED AS CONSULAR OFFICERS, WE SEE NO STATUS FOR THEM UNLESS THEY ARE INCLUDED IN THE DEFINITION OF CONSULAR EMPLOYEES. BECAUSE OF THE FUNCTIONS CONSULAR AGENTS ARE EMPOWERED TO PERFORM, WE DO NOT BELIEVE THAT THE DEFINITION CONSULAR EMPLOYEE IS APPROPRIATE. WE SUGGEST AN ADDITIONAL DEFINITION.

B) ARTICLE 7, PARAGRAPH 2. ARE LOCAL EMPLOYEES OF A CONSULAR DEPARTMENT OF AN EMBASSY CONSULAR EMPLOYEES UNDER THE DEFINITION CONTAINED IN ARTICLE 1(E)? LATTER MIGHT BE IMPROVED BY ADDING THE WORDS "OR AT A CONSULAR DEPARTMENT OF AN EMBASSY". THIS BECOMES IMPORTANT WHEN CONSIDERED IN THE CONTEXT OF ARTICLE 18.

C) ARTICLE 10. DOES DEPARTMENT CONSIDER THE TEMPORARY ABSENCE OF THE HEAD OF A CONSULAR FROM HIS CONSULATE DISTRICT AS REQUIRING PRIOR NOTIFICATION IN WRITING TO THE MINISTRY OF FOREIGN AFFAIRS? WE BELIEVE THIS REQUIREMENT IS UNNECESSARILY RESTRICTIVE UNLESS THE DEPARTMENT HAS NEED OF SUCH REQUIREMENT IN THE UNCLASSIFIED

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D) ARTICLE 17. IMMUNITY IS NOT PROVIDED FOR NATIONALS OF THE RECEIVING STATE. THIS DOES NOT CONTEMPLATE DUAL NATIONALS AND MAY CAUSE PROBLEMS, ESPECIALLY FOR DEPENDENTS. WE SUGGEST WORDING TO READ "PROVIDED THAT THE PERSON CONCERNED IS A NATIONAL OF THE SENDING STATE OR OF A THIRD STATE AND IS NOT A PERMANENT RESIDENT OF THE RECEIVING STATE." THIS SAME WORDING SHOULD BE USED WHENEVER APPROPRIATE ELSEWHERE E.G. ARTICLE 22, ARTICLE 23 AND ARTICLE 25.

E) ARTICLE 37, PARAGRAPH 4. PROBLEM OF ACCESS IS OF SUFFICIENT GRAVITY THAT WE URGE LANGUAGE TO COVER SPECIFICALLY INCOMUNICADO PERIOD. FOR EXAMPLE, THE FOLLOWING WORDS MIGHT BE ADDED TO THE PENULTIMATE SENTENCE "AND SHALL SPECIFICALLY BE PERMITTED DURING PERIODS WHEN THE DETAINEE IS OTHERWISE HELD IINCOMUNICADO UNDER APPROPRIATE LOCAL LAW".

F) ARTICLE 37, PARAGRAPH 5. ACCESS DURING THE SUMARIO PERIOD MIGHT BE COVERED BY CHANING THE PARAGRAPH TO RAD "IN THE CASE OF THE DETENTION OR TRIAL" AND "TO BE PRESENT DURING THE INVESTIGATION STAGES, DURING THE TRIAL...ECT." WORDING OF 1850 CONVENTION ALSO BE USED.

G) ARTILCE 37, PARAGRAPH 8. WE PRESUME THIS ARTICLE RELATES TO AMERICANS WHO ALSO HAVE COLOMBIAN NTIONALITY. WE BELIEVE THIS

PARAGRAPH IS CRUCIAL BUT  
FEEL IT UNLIKELY THAT THE COLOMBIANS WILL ACCEPT IT ONCE  
THEY UNDERSTAND ITS INTENT.

H) ARTICLE 41. PROVISIONS CONCERNING THE PROTECTION OF PRIVATE AIR-  
CRAFT AND THE PROCEDURES TO BE FOLLOWED DURING CONTEMPLATED SEIZURES  
FOR INVOLVEMENT IN ILLEGAL ACTIONS SHOULD BE ADDED. WE UNDERSTAND  
THESE PROCUDURES ARE SPELLED OUT IN A BILATERAL AGREEMENT WITH  
MEXICO AND APPROPRIATE LANGUAGE FROM THAT CONVENTION  
MIGHT BE ADOPTED.  
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